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No. 88-2050

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

CHICAGO TITLE INSURANCE COMPANY, FIRST AMERICAN TITLE INSURANCE COMPANY, LAWYERS TITLE INSURANCE CORPORATION, SAFECO TITLE INSURANCE COMPANY, STEWART TITLE GUARANTY COMPANY, and TICOR TITLE INSURANCE COMPANY,

Petitioners,

v.

TUCSON UNIFIED SCHOOL DISTRICT and PHOENIX ELEMENTARY SCHOOL DISTRICT NO. 1,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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REPLY BRIEF FOR PETITIONERS

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Dated: September 8, 1989

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REPLY BRIEF FOR PETITIONERS

ARGUMENT

Respondents in this action, the Tucson Unified School District and Phoenix Elementary School District No. 1 ("the Arizona plaintiffs" or "the respondents") were members of consolidated mandatory multistate class actions in which a final judgment was entered in June of 1986. This judgment, by its terms, extinguished claims asserted in twelve separately filed national class action lawsuits involving a prospective class of as many as 3.4 million persons. *See generally* Petition at 3-4. Respondents' request to opt out of the class was denied by the district court in Philadelphia, and this issue and

related due process issues were unsuccessfully appealed by respondents to the Third Circuit. Having failed in their direct challenge to the class action judgment, respondents sought to opt out through the back door by bringing a lawsuit in Arizona state court that was foreclosed by the express terms of the class action judgment.

Relying on its continuing jurisdiction over the judgment as well as on the relitigation exception to the Anti-Injunction Act, 28 U.S.C. § 2283, the district court in Philadelphia enjoined prosecution of the settled claims in the Arizona state court. The Third Circuit reversed the injunction concluding that, even though the class action judgment certifying the class and denying opt-outs was final and binding on all class members, the unavailability of an opt-out right deprived the district court of jurisdiction to enforce its class action judgment against absent class members otherwise beyond the class action court's personal jurisdiction.

The Third Circuit's decision is a serious departure from preexisting precedent of this Court and other Circuits. Its potential for disruption of carefully crafted mechanisms for the administration and resolution of complex, multistate litigation is profound.

I. RESPONDENTS IGNORE THE CONFLICTS CREATED BY THE THIRD CIRCUIT'S DECISION.

The Arizona plaintiffs claim that the Third Circuit's decision does not conflict with prior decisions of this Court or of other courts of appeals. Opposition at 12-15. This assertion is wrong. The Third Circuit's decision conflicts directly with decisions of this Court and of other Circuits, including an Eleventh Circuit decision announced after the Petition in this case was filed. Indeed, the legal and policy issues implicated by the Third Circuit decision are of such weight and are faced by the lower courts with such frequency that a grant of review in this case is especially important.

A. The Conflicts Between The Third Circuit Decision And Decisions Of The Other Circuits Are Manifest.

In the Petition for Certiorari, petitioners discussed nine decisions from other Circuits in which federal courts enjoined relitigation of their own prior judgments in distant forums in which the enjoining court possessed no apparent independent basis to assert personal jurisdiction. Petition at 16-19. Arizona only addresses two of these decisions, and its attempt to reconcile these two cases with the Third Circuit decision is unavailing.

In *In re Corrugated Container Antitrust Litigation*, 659 F.2d 1332 (5th Cir. 1981), *cert. denied*, 456 U.S. 936 (1982), the Arizona plaintiffs find no conflict inherent in the fact that the Texas district court (the class action tribunal) was held to have properly enjoined absent class members from litigating related claims in South Carolina state court. The Arizona plaintiffs attempt to distinguish *Corrugated* so as to avoid the obvious conflict with the Third Circuit decision by stating that "the absent class members consented to the [Texas district] court's exercise of personal jurisdiction." Opposition at 14. No citation is offered for this proposition, and for good reason; this "consent"—which is the basis of respondents' attempt to distinguish *Corrugated*—is neither explict nor implicit in the opinion in that case.

Similarly flawed is respondents' attempt to distinguish *Robertson v. National Basketball Association*, 622 F.2d 34 (2d Cir. 1980). The Arizona plaintiffs argue that the New York class action court's injunction against a class member's California lawsuit was proper because in *Robertson*, unlike this case, the class member (Wilt Chamberlain) received individual notice of the class action, was invited to participate, authorized institution of the class action, and had his attorney participate in the class action hearing. Opposition at 14-15. Upon the barest scrutiny, these distinctions dissolve. In the class action here the Arizona plaintiffs received published no-

tice, were invited to participate in the class action settlement hearing in Philadelphia, and in fact participated through the Arizona Attorney General's opt-out request. Contrary to respondents' assertion, Chamberlain's attorney did not "participate[] in arguing the merits of the class action." Opposition at 14. In fact, like the respondents' opt-out request in this case, Chamberlain's attorney's "appearance" at the class action hearing was *solely* for purposes of attempting to preserve his client's ability to pursue his own litigation elsewhere. 622 F.2d at 36 (Oakes, J., concurring).[1] The key to the Second Circuit holding in *Robertson* is that court's express recognition of the "long established" jurisdiction of courts to enjoin relitigation of matters already settled, *id.* at 35, and its application of this rule to enjoin relitigation by an absent class member in a distant forum.

Finally, in the period since the Petition for Certiorari was filed in the instant case, the Eleventh Circuit has announced yet another decision in conflict with that of the Third Circuit. In *Battle v. Liberty National Life Insurance Co.*, 877 F.2d 877 (11th Cir. 1989), the Eleventh Circuit upheld an injunction issued by a federal class action court under the relitigation exception to the Anti-Injunction Act. 28 U.S.C. § 2283. Like the district court's injunction in the instant case, that injunction barred a member of a mandatory Rule 23(b)(2) class from relitigating in state court claims resolved by a federal class action judgment, even though, as here, plaintiffs

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[1] Interestingly, Arizona also attempts to distinguish *Roberston* on the ground that the absent class member "did not contend that the class representation had been inadequate, or that due process was denied, or that the class settlement was unfair." Opposition at 14. But respondents themselves argued before the Third Circuit that their own participation in the class action proceeding was similarly limited in that they did not challenge adequacy of representation or fairness of the settlement. Consequently, this purported factual distinction between the Second Circuit decision in *Robertson* and the Third Circuit decision in this case is impossible to discern.

alleged a lack of adequate notice and representation in the federal proceeding. Unlike the Third Circuit, the Eleventh Circuit upheld this injunction, concluding that the class members' "due process challenge is not foreclosed; it simply must be brought in the forum which has lived with this case for nearly two decades." *Id.* at 883. The principle enunciated in *Battle* could not more squarely conflict with the Third Circuit decision here: whereas the Third Circuit *precluded* the class action tribunal from enjoining state court challenges to class action judgments, the Eleventh Circuit has held that such challenges *must* be brought before the class action court.[2]

The clear focus of the decisions of the Eleventh Circuit in *Battle*, the Fifth Circuit in *Corrugated*, the Second Circuit in *Roberison*, and the other cases relied upon by petitioners, Petition at 17-18, is that the goals and policies underlying class action procedures—*i.e.*, the just and efficient resolution of complex multiparty litigation—cannot be accomplished if the class action tribunal is foreclosed from exercising its discretion to enforce its judgments.[3] Yet the Third Circuit decision effects pre-

[2] In *Battle*, both the class action court and the tribunal in which the later due process challenge was brought were in the same state. Nevertheless, both the breadth of the Eleventh Circuit's analysis and the mandatory nature of its conclusion (that the due process challenge "must" be brought before the class action tribunal) render this fact irrelevant. Moreover the conflict between the Eleventh Circuit's "mandatory" standard and the Third Circuit's preclusive standard highlights the confusion of the federal courts on this important question.

[3] Respondents suggest that petitioners are ignoring or denying the well-established right of class members to collaterally attack class action judgments. Opposition at 7, 11. This simply is not true. As petitioners emphasized in their opening brief, they do not in any manner argue for the preclusion of class-members' rights to mount appropriate challenges to class action judgments; they simply argue that the class action court possesses the power to entertain such challenges if it chooses, in its discretion, to do so. The Third Circuit decision denies such power to the class action court.

cisely such a foreclosure by holding, as no court has heretofore held, that a federal class action court is without power to enforce mandatory multistate judgments by enjoining relitigation in the courts of states other than the one in which the federal court resides. A fundamental conflict among the Circuits therefore exists which must be resolved by this Court.

B. The Third Circuit Decision Is In Conflict With Precedent Of This Court.

The Arizona plaintiffs' contention that the Third Circuit's decision does not conflict with this Court's decision in *Supreme Tribe of Ben Hur v. Cauble*, 255 U.S. 356 (1921), is in error. At issue in *Ben Hur* was whether a federal class action court had the power to bind persons over whom the federal court would lack jurisdiction but for their membership in the class action. This was the *precise* issue resolved by the Third Circuit. While *Ben Hur* admittedly involved subject matter jurisdiction rather than personal jurisdiction, this distinction *cannot* have been relevant to the Court's holding, which manifestly was directed towards insuring that class action decrees be effective and conflicting judgments avoided. *See generally*, Petition at 12-13. Of principal concern to this Court in *Ben Hur* was the avoidance of "the determination of the rights of most of the class by a decree rendered upon a theory which may be repudiated in another forum as to part of the same class." 255 U.S. at 366-67. The Third Circuit's holding renders this precise scenario unavoidable, and thus conflicts with the principles underlying this Court's decision in *Ben Hur*.

II. LIKE THE THIRD CIRCUIT, THE ARIZONA PLAINTIFFS MISREAD THIS COURT'S DECISION IN SHUTTS.

Respondents erroneously interpret this Court's decision in *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985), as holding that absent class members may be bound by

class action judgments only if they have been given an opportunity to opt out of the class. As discussed in the Petition for Certiorari, such an argument represents a profound misreading of *Shutts*. *Shutts* holds that class action judgments may only bind absent class members where "minimal procedural due process protection" has been provided. 472 U.S. at 811-12. Because *Shutts* involved only class action claims "wholly or predominantly for money judgments," 472 U.S. at 811 n.3, due process was held to require that class members be given the opportunity to opt out. *See generally*, Petition at 9-10. In Respondents' *own* words, however, the instant lawsuit is not such a case, but rather is a class action "involving both important injunctive relief and damage claims." (Opposition Questions Presented.) In such cases—often referred to as "hybrid" class actions—due process has not been held to *require* that class members be given the right to opt out. The absence of an opt-out right in this case thus does not, under *Shutts*, diminish the binding effect of the final class action judgment. Indeed, this principle was expressly decided by the district court in approving the class action settlement, App. 46-49, and was upheld by the Third Circuit in its *per curiam* affirmance in the face of the respondents' appeal of the class action judgment.[4]

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[4] The Arizona plaintiffs argue that the relitigation exception to the Anti-Injunction Act only applies where there is a showing that relitigation in state court was initiated in bad faith or for purposes of harassment. Opposition at 10-11. Such a limitation is found nowhere in the statute or in *any* of the Anti-Injunction Act cases relied on by Petitioners (including the recent Eleventh Circuit decision in *Battle*, which belies respondents' reading of the statute). Moreover, respondents' "bad faith" argument would appear to apply as a limitation on all of their own due process/minimum contacts arguments. Nowhere do they identify *any* support for the proposition that the test of due process is a sliding standard which depends upon the degree of good or bad faith of the party involved.

III. A RECENTLY FILED WISCONSIN STATE LAWSUIT HIGHLIGHTS THE NEED FOR THIS COURT TO REVIEW THE THIRD CIRCUIT'S DECISION.

As explained in the Petition for Certiorari, the Third Circuit decision undermines the purposes of Rule 23 and the multidistrict consolidation procedures to prevent inconsistent and varying adjudications of class claims. Petition at 19-24. Subsequent events demonstrate that the risk of multiple attempts to relitigate the settled class claims in this case is not hypothetical.

On August 29, 1989, a new class action complaint was filed in state court in Milwaukee, Wisconsin, asserting claims against the petitioner title insurance companies and others allegedly flowing from the operation of the Wisconsin title insurance rating bureau. The Wisconsin complaint is reproduced as an appendix to this Reply Brief. The legality of the rate-filing activities of the rating bureaus in thirteen states, including Wisconsin, was the central issue in the federal class action litigation in Philadelphia, and the new Wisconsin state court case asserts claims that, as against petitioners and persons acting on their behalf, were extinguished by the express terms of the settlement judgment in the federal class action. App. 74.

By limiting the ability of a federal class action court to enforce its own judgments, the Third Circuit's decision encourages the proliferation of additional lawsuits and the risk of potentially inconsistent and varying adjudications in distant forums. In this case, the petitioners face such a risk not only in state court in Arizona, but now also in state court in Wisconsin.

CONCLUSION

Rather than explaining why certiorari is inappropriate in this case, Arizona's Opposition Brief accomplishes precisely the opposite. It serves to highlight the conflict between the Third Circuit decision and decisions of this Court and other Circuits. It also brings into sharp focus the importance and timeliness of the issues that petitioners have raised, and emphasizes the need for this Court to reaffirm the principle that class action courts possess the power to enforce their own binding judgments. For the reasons stated above and in the Petition for Certiorari, review should be granted to reverse the decision of the Third Circuit.

Respectfully submitted,

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Dated: September 8, 1989

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APPENDIX

APPENDIX

STATE OF WISCONSIN
CIRCUIT COURT BRANCH
MILWAUKEE COUNTY

Case No.: 89CV012004

CHARLES E. PRENTICE and JANE G. PRENTICE, husband & wife, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

TITLE INSURANCE COMPANY OF MINNESOTA, CHICAGO TITLE INSURANCE COMPANY, STEWART TITLE GUARANTY COMPANY, SECURITY UNION TITLE INSURANCE COMPANY (f/k/a SAFECO TITLE INSURANCE COMPANY), LAWYERS TITLE INSURANCE CORPORATION, TICOR TITLE INSURANCE COMPANY (f/k/a PIONEER NATIONAL TITLE INSURANCE COMPANY), FIRST AMERICAN TITLE INSURANCE COMPANY of the MID-WEST (f/k/a ST. PAUL TITLE INSURANCE CORPORATION), AMERICAN TITLE INSURANCE COMPANY, COMMONWEALTH LAND TITLE INSURANCE COMPANY, TRW TITLE INSURANCE COMPANY (f/k/a INSURED TITLE, INCORPORATED) NATIONAL ATTORNEY'S TITLE INSURANCE COMPANY, TITLE USA INSURANCE CORPORATION of NEW YORK (f/k/a U.S. LIFE TITLE INSURANCE COMPANY of NEW YORK), ALLAN F. MONTEZAN, as an individual and in his representative capacity on behalf of AMERICAN TITLE INSURANCE COMPANY, RICHARD F. TYSON, as an individual and in his representative capacity on behalf of AMERICAN TITLE INSURANCE COMPANY, CHARLES B. SCHIERECK, as an individual and in his representative capacity on behalf of CHICAGO TITLE INSURANCE COM-

PANY, JACK OLIVER, as an individual and in his representative capacity on behalf of COMMONWEALTH LAND TITLE INSURANCE COMPANY, DUANE H. WUNSCH, as an individual and in his representative capacity on behalf of ASSOCIATE TITLE COUNSEL COMMONWEALTH LAND TITLE, INSURANCE COMPANY, DONALD GRABSKI, as an individual and in his representative capacity on behalf of LAWYERS TITLE INSURANCE CORPORATION, RICHARD STOPCZYNSKI, as an individual and in his representative capacity on behalf of LAWYERS TITLE INSURANCE CORPORATION, PHILIP M. LARKIN, as an individual and in his representative capacity on behalf of TICOR TITLE INSURANCE COMPANY, HARVEY POLLOCK, as an individual and in his representative capacity on behalf of TITLE INSURANCE COMPANY OF MINNESOTA,

Defendants.

COMPLAINT—CLASS ACTION

Plaintiffs, for themselves and as the representatives of the class described below, by their undersigned attorneys, bring this action for treble damages due to the defendants' violations of the antitrust laws, and allege as follows:

I. JURISDICTION AND VENUE

1. This action arises under Sec. 133.18 Wis. Stats. The acts averred constitute an unlawful combination and conspiracy in restraint of trade or commerce within the State of Wisconsin and are in violation of Sec. 133.03 Wis. Stats.

2. Jurisdiction is conferred upon this court by Sec. 801.05 Wis. Stats. and Sec. 133.03 Wis. Stats.

3. Each of the defendants named in this Complaint transacts business, maintains an office, or is found within

the State of Wisconsin, and each of the defendants is within the jurisdiction of this Court for the purpose of service. Many of the unlawful acts done pursuant to the combination and conspiracy hereinafter alleged have been performed within the State of Wisconsin. The intrastate commerce described hereinafter was carried on, in part, within the State of Wisconsin.

Venue is laid in this Circuit pursuant to the provisions of Sec. 801.50 Wis. Stats. The defendants are found, and/or transact or do business in this county, and/or the claims asserted arose in this county.

II. PLAINTIFFS

4. Plaintiffs, Charles E. and Jane G. Prentice, are individuals, who as man and wife, currently reside in Milwaukee County, Wisconsin at 4410 N. Marlburough Drive, Village of Shorewood, WI 53211. During the relevant period of the conspiracy alleged herein, viz. in September, 1984, plaintiffs, Charles E. and Jane G. Prentice were residents of Milwaukee County and purchased title insurance and other settlement services relating to real estate in Milwaukee County, Wisconsin from defendant, the Title Insurance Company of Minnesota, and have therefore been injured by the antitrust violations alleged herein.

III. DEFENDANTS

5. The corporations named below are made defendants herein. Each defendant is incorporated and exists under the laws of the State listed opposite its name, with its principal place of business at the City listed. During all or part of the period covered by this complaint, each defendant corporation engaged in the business of providing title search services, title insurance, and other settlement services in connection with the purchase and sale of real estate in the State of Wisconsin.

Name of Corporation	State of Incorporation	Principal Place of Business
Title Insurance Company of Minnesota	Minnesota	400 Second Ave., South Minneapolis, MN 55401
Chicago Title Insurance Company	Missouri	1025 Grand Ave. Kansas City, MO 64116
Stewart Title Guaranty Company	Texas	Stewart Building Galveston, TX
Security Union Title Insurance Company	Illinois	300 E. Fifth Ave. Naperville, IL 60540
Lawyers Title Insurance Corporation	Virginia	6630 W. Broad St. Richmond, VA 23230
Ticor Title Insurance Company	California	6300 Wilshire Blvd. Suite 836 Los Angeles, CA 90048
First American Title Insurance Company of the Mid-West	Michigan	1650 W. Big Beaver Rd. Troy, MI 48084
American Title Insurance Company	Florida	1101 Brickell Ave. Miami, FL 33131
Commonwealth Land Title Insurance Company	Pennsylvania	8 Penn Center Plaza Philadelphia, PA 10103
TRW Title Insurance Company	Kansas	6800 College Blvd. Suite 200 Overland Park, KS 66211
National Attorney's Title Insurance Company	New York	32 Broadway New York, NY 10004
Title USA Insurance Corporation of New York	New York	120 Broadway New York, NY 10271

6. The defendants named below are sued individually and also in their representative capacity on behalf of the corporate defendants by whom they were employed during part or all the conspiracy alleged herein.

Individual	Current Address	Defendant Corporate Employer
Allan F. Montezan	3332 Pennsylvania Ave. Milwaukee, WI 53207	American Title Insurance Company
Richard F. Tyson	5204 W. Washington Blvd. Milwaukee, WI 53208	American Title Insurance Company
Charles B. Schiereck	734 N. Fourth St. Milwaukee, WI 53203	Chicago Title Insurance Company
Jack Oliver	2511 N. 124th St. Brookfield, WI 53005	Commonwealth Land Title Insurance Company
Duane H. Wunsch	2511 N. 124th St. Brookfield, WI 53005	Associate Title Counsel, Commonwealth Land Title Insurance Company
Donald Grabski	address unknown but upon information and belief is a resident of the State of Wisconsin	Lawyers Title Insurance Corporation
Richard Stopczynski	611 North Broadway Milwaukee, WI 53202	Lawyers Title Insurance Corporation
Philip M. Larkin	1460 Carriage Lane Brookfield, WI 53005	Ticor Title Insurance Company
Harvey Pollock	address unknown but upon information and belief is a resident of the State of Wisconsin	Title Insurance Company of Minnesota

7. The acts charged in this Complaint to have been done by each corporate defendant were authorized, ordered or done by its officers, agents, employees, or representatives, while actively engaged in the management of its affairs.

8. The acts charged in this Complaint to have been done by each individual defendant were performed in

their individual capacity as a person, as well as in their capacity as an officer, agent, employee, or representative, of the corporate defendants.

IV. CO-CONSPIRATORS

9. Various other persons, firms and corporations not made defendants herein, including, but not limited to, the Wisconsin Title Insurance Rate Service Organization, a title insurance rate bureau, have participated as co-conspirators with the defendants in the offenses charged and the violations alleged herein and have performed acts and made statements in furtherance thereof.

V. ACCRUAL OF THE CAUSE OF ACTION

10. Prior to January 7, 1985, plaintiffs had no knowledge of the aforesaid antitrust violations, or of any facts which might have led to discovery thereof. Plaintiffs could not have discovered the violation at an earlier date by the exercise of due diligence because of the deceptive practices employed by defendants to avoid detection of, and conceal, such violations when making their rate filings for title insurance, title search services, endorsements applicable to the issuance of title insurance, and other settlement services with the Wisconsin State Insurance Commission.

On January 7, 1985, the Federal Trade Commission instituted a federal antitrust suit for injunctive relief against certain of the defendants herein, alleging their participation in a nation-wide price fixing conspiracy which included the circumstances upon which the allegations of paragraphs 15, 16, 17, and 18 of this Complaint are based. The State of Wisconsin was one of the states in which the Federal Trade Commission alleged said price fixing occurred.

VI. CLASS ACTION ALLEGATIONS

11. Plaintiffs bring this action on behalf of themselves and as a class action under the provisions of Sec. 803.08 Wis. Stats. as representatives of the class defined herein:

(a) The class consists of all persons as defined in Sec. 133.02(3) Wis. Stats. in the State of Wisconsin (excluding defendants, their subsidiaries, agents, and their affiliates) who have during the period 1971 through at least December 31, 1984, but in any event to the termination of the conspiracy alleged which date is not currently known to plaintiffs, purchased directly, or indirectly from one or more of the defendants (including their subsidiaries, agents or affiliates) title search services, title insurance, and or other settlement services in connection with the purchase or sale of real estate located in the State of Wisconsin.

(b) The members of the class are so numerous as to make joinder of the class impracticable. Plaintiffs are unable at this time to state the precise size of the class, but on information and belief states that it is in excess of 650,000. The size of the class and the identity of its members should be ascertainable from the defendants' own books and records.

(c) Plaintiffs will fairly and adequately protect the interests of the class. The interest of the plaintiffs is coincident with, and not antagonistic to, that of the remainder of the class. In addition, plaintiffs are represented by experienced and able antitrust counsel who have been involved in many antitrust cases in various states and federal courts throughout the United States.

(d) Plaintiffs' claims are typical of those to be asserted by the class. Except as to the amount of damages each member of the class has by itself sustained, all other questions of law and fact are common to the class. The common questions of law and fact consist in part of those alleged in paragraphs 15, 16, 17 and 18 hereof, and

include, among others, the central question of the existence and effect upon plaintiffs and the class members of the combination and conspiracy alleged herein.

(e) Because the only non-common issue is the amount of individual damages to each particular class member, common questions of law and fact clearly predominate. Class action treatment is a superior method for the fair and efficient adjudication of the controversy herein described, because it permits a large number of injured persons, the joinder of which is impracticable, to prosecute their common claim in a single forum simultaneously. The class members are identifiable from information in the hands of the defendants, and the class action provides an efficient method whereby the enforcement of their rights can be fairly managed.

(f) Each of the members of the class, including plaintiffs, have purchased title search services, title insurance, and/or other settlement services directly, or indirectly, from one of the defendants during the period covered by this complaint and have sustained damages as a result of the combination and conspiracy herein alleged.

VII. NATURE OF TRADE AND COMMERCE

12. During all or part of the period of time covered by this Complaint, the defendant corporations were engaged in the business of, among other things, providing title search services, title insurance, and other settlement services to sellers of real estate in the State of Wisconsin. Defendants accounted for a significant portion of the title insurance sold in Wisconsin during the period covered by this Complaint, and provided their title search services and other settlement services in connection with the sale of such title insurance.

13. During the period covered by this Complaint, defendants were themselves engaged directly in intrastate commerce by reason of their operations in the State of

Wisconsin. The amount of commerce involved is substantial. On information and belief damages are estimated to be Tens of Millions of Dollars for the period of the conspiracy.

14. The activities of the defendants and co-conspirators, as described herein, are within the flow of intrastate commerce and substantially affect intrastate commerce in Wisconsin.

VIII. VIOLATIONS ALLEGED

15. Beginning at least as early as 1971 and continuing thereafter at least until sometime in 1986, and possibly longer, the exact dates being unknown to plaintiffs, the defendants and co-conspirators were engaged in a continuing combination and conspiracy in unreasonable restraint of the aforesaid intrastate trade and commerce in violation of Sec. 133.03 Wis. Stats.

16. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, to raise, fix, maintain and stabilize the prices and terms and conditions of sale of title search and examination services, title insurance, endorsements applicable to the issuance of title insurance, and other settlement services in connection with real estate transactions in the State of Wisconsin.

17. All of the defendants participated in a title insurance rating bureau, the Wisconsin Title Insurance Rate Service Organization, through which they agreed from time to time upon the prices for title search and examination services, title insurance, endorsements applicable to the issuance of title insurance, and other settlement services to be charged to the customers of the corporate defendants in the State of Wisconsin in violation of the Wisconsin Insurance laws, Sec. 625.33 Wis. Stats. This rating bureau was a co-conspirator of the defendants in connection with violations alleged.

18. In formulating and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators did those things which they combined and conspired to do.

IX. EFFECT OF THE COMBINATION AND CONSPIRACY

19. The aforesaid combination and conspiracy has had the following effects, among others:

(a) Prices and terms and conditions of sale of title search services, title insurance, and other settlement services sold by the defendants in the State of Wisconsin have been fixed, raised, maintained and stabilized at artificial and non-competitive levels;

(b) Purchasers of title search services, title insurance, and other settlement services in the State of Wisconsin have been deprived of the benefits of free and open competition in the purchase of title search services, endorsements applicable to the issuance of title insurance, title insurance, and other settlement services;

(c) Competition among the defendants in the sale of title search services, endorsements applicable to the issuance of title insurance, title insurance, and other settlement services has been restrained.

X. DAMAGES

20. During and throughout the period of the combination and conspiracy, plaintiffs and members of the class they represent purchased title search services, title insurance, and other settlement services from one or more of the defendants. By reason of the defendants' illegal conduct, plaintiffs and the members of the class they represent were compelled to pay and have paid substantially higher prices for title search services, endorsements ap-

plicable to the issuance of title insurance, title insurance, and other settlement services than they would have paid absent defendants' combination and conspiracy.

21. As a result of the defendants illegal combination and conspiracy, plaintiffs and the class they represent have sustained substantial loss and damage in their business and property in an amount which is presently undetermined.

XI. PRAYER FOR RELIEF

WHEREFORE, plaintiffs prays [*sic*] that:

(a) The Court adjudge and decree that the defendants, and each of them, have engaged in an unlawful combination and conspiracy in violation of Sec. 133.03 Wis. Stats.;

(b) The Court determine, as provided by Sec. 803.08 Wis. Stats., that this action is a proper class action and that the plaintiffs are proper class representatives;

(c) Pursuant to Sec. 133.18 Wis. Stats. plaintiffs and other members of the class recover threefold the damages determined to have been sustained by each of them respectively, and that joint and several judgment be entered herein against defendants, and each of them, for the amount determined;

(d) Pursuant to Sec. 133.18 Wis. Stats. plaintiffs and members of the class they represent recover costs of the suit, together with reasonable attorneys' fees;

(e) The Court grant such other, further, or different relief as the case may require and the Court may deem just and proper under the circumstances; and

(f) Plaintiff demands trial by jury of all issues so triable in this case.

Dated this 29th day of August, 1989.

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